

MINUTES OF
THE RHODE ISLAND INDUSTRIAL – RECREATIONAL BUILDING AUTHORITY

April 9, 2010 (#452)

PUBLIC SESSION

A monthly meeting of the Board of Directors (the “Board”) of the **RHODE ISLAND INDUSTRIAL – RECREATIONAL BUILDING AUTHORITY** (the “Authority”) was held in public session and executive session at the offices of the Rhode Island Economic Development Corporation, 315 Iron Horse Way, Suite 101, Providence, Rhode Island on April 9, 2010 at approximately 8:30 a.m., pursuant to notice of the meeting to all Directors, and public notice of the meeting as required by Rhode Island General Law 42-46-6.

PRESENT: Frank R. Benell, Chairperson
 Frances H. Gammell-Roach, Vice Chairperson
 William B. Sweeney, Member

ABSENT: Michael S. Imbruglia, Member

ALSO PRESENT: Earl F. Queenan, Jr., Manager
 Sean W. Esten, Loan Portfolio Manager
 Thomas V. Moses, Legal Counsel
 Carol J. Anguilla, Moses & Afonso

Chairman Benell presided over the meeting.

1. **Call to Order**

Mr. Bennell called the meeting to order at 8:45 a.m.

2. **Approval of the Public Session Minutes and the Executive Session Minutes of the Meeting Held on March 5, 2010**

Mr. Benell presented the Public Session Minutes and the Executive Session Minutes of the Meeting of March 5, 2010. A motion was duly made by Dr. Sweeney, was seconded by Mrs. Gammell-Roach, and was unanimously carried to accept the Public Session Minutes and the Executive Session Minutes, each as presented. A roll call vote was taken:

Mr. Benell – aye
Mrs. Gammell-Roach – aye
Dr. Sweeney – aye
Mr. Imbruglia – ABSENT

3. Maintain the Executive Session Minutes of March 5, 2010 Confidential.

The next item to come before the Board was a vote to maintain the confidentiality of the Executive Session Minutes of the Board meeting held on March 5, 2010. A motion was duly made by Mrs. Gammell-Roach, was seconded by Dr. Sweeney, and was unanimously carried to maintain the confidentiality of the Executive Session Minutes of the Board meeting held on March 5, 2010. A roll call vote was taken:

Mr. Benell – aye
Mrs. Gammell-Roach – aye
Dr. Sweeney – aye
Mr. Imbruglia – ABSENT

4. Review and Accept the Internally Prepared Financial Statements for the Period Ending February 28, 2010.

Mr. Queenan presented the internally prepared financial statements for the period ending February 28, 2010. There being no discussion, a motion was duly made by Dr. Sweeney, was seconded by Mrs. Gammell-Roach, and was unanimously carried to accept the internally prepared financial statements for the period ending February 28, 2010. A roll call vote was taken:

Mr. Benell – aye
Mrs. Gammell-Roach – aye
Dr. Sweeney – aye
Mr. Imbruglia – ABSENT

5. Consideration of a Final Resolution of Approval for the Issuance of up to \$5,000,000.00 of Insurance on \$6,000,000.00 of Taxable Industrial Revenue Bonds to be Issued by the Rhode Island Industrial Facilities Corporation on behalf of Capco Endurance, LLC and Capco Steel LLC.

The next item to come before the Board was the consideration of a final resolution on behalf of Capco Endurance, LLC and Capco Steel LLC authorizing the issuance by the Authority of insurance in an amount not to exceed \$5,000,000.00 on \$6,000,000.00 aggregate principal amount of taxable industrial revenue bonds to be issued by the Rhode Island Industrial Facilities Corporation subject to final approval by such Corporation and authorizing and approving the execution and delivery of a Regulatory Agreement and other documents and matters in connection therewith.

Mr. Moses outlined the proposed project located at 45 Acorn Street, Providence, Rhode Island which had been previously subject to a preliminary resolution adopted by the Board of Directors in Executive Session on March 5, 2010. The proposed project involves the financing of furnishings, improvements and equipment related to the real property and manufacturing operation of Capco Endurance, LLC and Capco Steel, LLC at 45 Acorn Street.

In response to questions from the Board, Mr. Moses explained the structure of the transaction and the payment of fees and expenses by the Obligor under the Bonds.

There being no further discussion, a motion was duly made by Dr. Sweeney, was seconded by Mrs. Gammell-Roach, and was unanimously carried to adopt the resolution attached hereto as Exhibit A and hereby made a part of these minutes. A roll call vote was taken:

Mr. Benell – aye
Mrs. Gammell-Roach – aye
Dr. Sweeney – aye
Mr. Imbruglia – ABSENT

6. Other Business

Authority staff confirmed that there were no other matters to be discussed during this portion of the public meeting.

7. Adjournment

There being no further business to come before the Board, upon motion duly made by Dr. Sweeney and seconded by Mrs. Gammell-Roach, the Board unanimously voted to adjourn the meeting. A roll call vote followed:

Mr. Benell – aye
Mrs. Gammell-Roach – aye
Dr. Sweeney – aye
Mr. Imbruglia – ABSENT

The meeting was adjourned at 9:20 a.m.

Respectfully submitted,

/s/ Earl F. Queenan, Jr.
Earl F. Queenan, Jr.
Manager

EXHIBIT A

CAPCO ENDURANCE, LLC/CAPCO STEEL LLC

RESOLUTIONS OF APPROVAL

BOND - REAL ESTATE AND LEASEHOLD IMPROVEMENTS (IBA #3__(A))

BOND – MACHINERY & EQUIPMENT (IBA #321(B))

WHEREAS, the Rhode Island Industrial-Recreational Building Authority (the “Authority”) has received sufficient information from Capco Endurance LLC (the “Obligor”) and Capco Steel LLC (the “Co-Obligor” and together with “Obligor”, the “Obligors”) and where the Co-Obligor is the current lessee of certain real estate located in Providence, Rhode Island consisting of a 16,500 square foot industrial building and real property located at 45 Acorn Street (the “Premises”) by virtue of that certain Lease by and between Acorn Realty, Inc., as owner of the Premises (the “Lessor”), and Co-Obligor as tenant (the “Acorn Lease”), with respect to Obligors’ intent to furnish, improve and equip the Premises.

WHEREAS, the Authority has been advised that the Rhode Island Industrial Facilities Corporation (the “Issuer”), a local development corporation organized and existing under the laws of the State of Rhode Island (the “State”), proposes to acquire Obligor’s interest in the Premises pursuant to the Acorn Lease and the improvements from Obligors and to sublease the Premises and such improvements (together, the “Property”) to Obligors pursuant to a Lease Agreement (the “Lease”); and

WHEREAS, the Authority finds that Issuer’s proposed acquisition of the leasehold interest in the Premises, and of the improvements, and of certain machinery and equipment to be located at the Premises (collectively, the “Project”) is a project within the meaning of Section 42-34-6 of the General Laws of the State, as amended; and

WHEREAS, Issuer intends to issue up to Six Million Dollars (\$6,000,000.00) of its economic development revenue bonds in one or more series (the “Bonds”) to assist the Obligors in financing the Project under a lease agreement or some other form of finance agreement, which, in any case, would provide for payments sufficient to pay the principal of, interest and redemption premium, if any, on the Bonds which will be secured by a first-priority mortgage in favor of the Issuer and the Authority on the Project (the “Mortgage”), a first-priority security interest on certain machinery and equipment and a junior security interest on all business assets of the Obligors (the “Security Agreement”). Webster Bank, N.A. or an affiliate thereof (the “Bank”) intends to purchase the Bonds for financing of the Project; and

WHEREAS, Obligors’ lease payments to Issuer under the Lease shall be used by Issuer to repay the Bond; and

WHEREAS, the Authority has agreed, subject to certain terms and conditions, to insure certain of the principal and interest payments under the Mortgage.

NOW THEREFORE BE IT RESOLVED, that upon completion of the Project, as more fully described in the information filed with the Authority, which is incorporated herein and made a part hereof, the Authority will issue a Mortgage Insurance Agreement (the "Insurance Agreement") insuring the repayment of certain principal and interest of the Bond, subject to the following terms and conditions::

- 1) That all the provisions of 42-34 General Laws of the State, as amended, are fully complied with.
- 2) That the Collateral for the Bonds shall include, among other things, the following, which shall be in form and substance satisfactory to the Authority:
 - a. a first-priority Mortgage on the Project, which constitutes a 16,500 square foot industrial building located at 45 Acorn Street, Providence, Rhode Island;
 - b. the assignment of all leases and rents for all or any part of the Premises throughout the term of the Bond;
 - c. a first-priority security interest in favor of the Authority with respect to the machinery and equipment ("Excepted M&E");
 - d. a first-priority security interest in favor of the Bank in all of Obligors' corporate tangible and intangible assets, including but not limited to receivables, inventory and equipment but excluding the Excepted M&E;
 - e. a second-priority security interest in favor of the Authority in all of Obligors' corporate tangible and intangible assets, including but not limited to receivables, inventory and equipment but excluding the Excepted M&E;
 - f. a second-priority security interest in favor of the Bank in the Excepted M&E;
 - g. continuing and unconditional guaranties of all of Obligors' obligations to Bank, Issuer and the Authority under or in connection with the Financing Documents, as defined below (the "Guaranty"), given by Lessor (the "Guarantor"); and
 - h. an Assignment to the Issuer of Obligor's leasehold interest under the Acorn Lease.
- 3) That the principal amount of the Bonds to be insured by the Authority under the Insurance Agreement shall not exceed the sum of (i) Five Million Dollars (\$5,000,000) or the aggregate of (i) ninety percent (90%) of the market value of

the Premises plus (ii) eighty percent (80%) of the market value of the machinery and equipment plus (iii) eighty percent (80%) of the cost of labor for the leasehold improvements and the cost of installation of the machinery and equipment, as determined by the Authority (the "Insured Principal"), whichever is less, plus (ii) an amount sufficient to cover the cost of mortgage insurance premiums due the Authority and administrative fees due the Issuer.

- 4) That the interest rate on said Bonds is fixed at Seven Percent (7%) for the term of the Bonds.
- 5) That the term of the Bonds shall not exceed twenty (20) years for the Bond relating to the Premises, and fifteen (15) years for Bonds relating to machinery, equipment and leasehold improvements, respectively.
- 6) That the Bonds contemplated herein may contain prepayment provisions.
- 7) That the Bond and Mortgage documents require that real estate taxes be escrowed monthly with the Bank.
- 8) That the Obligor shall have an option to purchase the Project for \$1,000 upon repayment in full of the amounts due under the Lease, Bonds, Mortgage, Security Agreement, Insurance Agreement, and any and all other documents, instruments and agreements executed in connection therewith (all of the foregoing, the "Financing Documents").
- 9) That the Authority, under the Insurance Agreement, shall insure only the Insured Principal and regular interest payments on the Insured Principal due under the Bonds, and shall not insure or be liable for any other principal, interest, cost, fee, charge or expense, including but not limited to any prepayment premium or penalty, default interest or late charges.
- 10) That the premium to be charged by the Authority to Obligors for insurance of the Insured Principal and interest thereon under the Insurance Agreement shall be one percent (1%) per annum of the principal balance, payable monthly in arrears. The Obligors shall be required to make arrangements with the Bank that will enable the Bank to automate the scheduled payments, in the form of a check to the Authority on a timely basis. In addition, in the event that the Bonds are repaid in whole or in part by Obligors at any time prior to the tenth (10th) anniversary of the Closing (defined below), Obligors shall pay to the Authority the present value of all mortgage insurance premiums that would have been due on the prepaid principal through the tenth (10th) anniversary of the Final Closing.
- 11) That the administration fee to be charged by the Issuer shall be Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) payable by Obligors at the time of

closing on the Bonds, Mortgage, Insurance Agreement and other Financing Documents (the "Closing").

- 12) That the commitment fee to be charged by the Authority shall be Ten Thousand and 00/100 Dollars (\$10,000.00) payable by Obligors prior to the Closing.
- 13) That this Resolution of Approval shall expire on April 9, 2011 (unless extended) and the Closing shall take place before the Resolution of Approval expires.
- 14) That all contracts, leases and other legal documents by and between Obligors, Issuer, the Bank and the Authority shall be submitted, for approval, to the Authority, Issuer, Bank and their respective counsel.
- 15) That there shall be a charge to the Obligors for legal expenses of the Authority, plus any other costs, fees and expenses of the Authority and that such charges, up to and including the Closing, shall not be capped. In the event that the Authority determines that Outside Counsel is required due to the Obligor, the Co-Obligor, or any related party having its corporate offices outside of the United States of America or due to any Guarantor or any related party having his, her or its Citizenship outside of the United States of America, any fees and expenses associated therewith will be the sole responsibility of the subject Obligor, the subject Co-Obligor, Guarantor or related party. The solicitation for Outside Counsel will be performed by the Authority.
- 16) That, prior to the Closing, the Obligors shall submit to the Authority, Issuer, Bank and their respective counsel the following documents, in form and substance satisfactory to the Authority, Issuer, Bank and their respective counsel:
 - a. a fully executed loan commitment letter from the Bank (or other Authority approved Bank) stating Bank's intention to purchase the Bonds;
 - b. a commitment to issue a Title Insurance Policy protecting the interest of the Issuer, Bank and Authority in the Project as their interests may appear;
 - c. appraisal satisfactory in form and substance to the Authority, at Obligors' sole cost and expense, of the Project's cost or value by an appraiser selected by the Bank and satisfactory to the Authority;
 - d. a Phase 1 environmental assessment and limited subsurface investigation of the Premises;
 - e. copies of any licenses or permits required for the Project;
 - f. Obligor's, Co-Obligor's and Guarantor's most current fully audited financial statement, together with certification that there has been no material adverse

change in Obligor's, Co-Obligor's or Guarantor's financial position since the date of the most recent audited financial statements delivered to the Authority, certified by an independent certified public accountant selected by the Obligors and acceptable to the Authority;

- g. certificates of insurance on all required insurance policies related to the Project, including but not limited to hazard and liability, together with copies of endorsements on each policy protecting the interest of the Issuer as Owner, and Bank and the Authority as mortgagees and additional insured. Obligors shall obtain flood insurance in conformity with this paragraph unless Obligors provides evidence satisfactory to the Authority that flood insurance is not required;
- h. an Officer Certificate from each of Obligor and Co-Obligor regarding authority to transfer ownership interests in the Property to the Issuer and to enter into the Lease transaction with the Issuer and all the Financing Documents to which each is a party; and an Officer Certificate for the Guarantor regarding the Guarantor's authority to guaranty Obligors' obligations under the Financing Documents and to enter into any other Financing Documents to which such Guarantor is a party;
- i. Certificates of Good Standing for Obligor, Co-Obligor and Guarantor from Secretaries of State of the State of each of their respective formation and such other states as the Authority shall require;
- j. Certified copies of each of Obligor's, Co-Obligor's and Guarantor's Articles of Incorporation and By-Laws or Articles of Organization and Operating Agreement, as applicable;
- k. Notice of Determination of State Planning Council;
- l. Certificates of Good Standing for each of the Obligor, Co-Obligor and Guarantor from the State Department of Revenue of each of their respective states of formation and any other state that the Authority deems necessary;
- m. The Guaranty;
- n. an assignment in favor of Bank, the Authority and Issuer of all documents, contracts and papers concerning the construction, development, use, maintenance, licensing or operation of the Project;
- o. a fully-executed Regulatory Agreement among Issuer, Obligors, Guarantor, Bank and the Authority (the "Regulatory Agreement"), which shall, among other things, contain a provision whereby the Obligors shall covenant that the Project is in compliance with all environmental laws, that the Obligors will

continue to comply with all environmental laws, and that the Obligor shall immediately notify the Authority of any notices of violation of environmental law or any claims made with respect thereto. In addition, the Obligor shall indemnify and hold harmless the Authority, the Issuer and the Bank against any and all violations of environmental law and any and all liabilities, claims or other losses of every kind in connection therewith.

- p. written evidence from the Bank that all conditions as stipulated in Bank's commitment letter have been fully satisfied;
 - q. evidence satisfactory to the Authority that no event of default exists under the Financing Documents; and
 - r. such other information as may be requested by the Authority.
- 17) In addition, the legal documentation for the Closing shall contain the following provisions:
- a. Bank shall be responsible for the timely filing of all UCC renewals.
 - b. That neither Obligor shall declare or pay any dividends without the prior written approval of the Authority, provided, however, during such fiscal years, or portions thereof, that any such Obligor is a Subchapter-S corporation, as defined in the Internal Revenue Code of 1986, as amended (the "Code"), such Obligor shall be permitted to make distributions to its shareholders in each fiscal year subject to the following conditions for each fiscal year:
 - (1) The amount of said distributions shall not exceed the amount of additional state and federal income taxes imposed on its shareholders as a result of such Obligor's election of Sub Chapter "S" status.
 - (2) Certification by a Certified Public Accountant:
 - (A) that such Obligor is a Subchapter "S" corporation.
 - (B) of the total income deemed distributed and total distributions declared and/or paid to shareholders by such Obligor.
 - (C) of the additional state and federal income taxes imposed on each shareholder as a result of such Obligor's election of Subchapter "S" status.

- (3) Continuous compliance with all existing terms and conditions of the Financing Documents.
- c. That the Guarantor shall not declare or pay any dividends without the prior written approval of the Authority, provided, however, during such fiscal years, or portions thereof, that the Guarantor is a Subchapter-S corporation, as defined in the Code, the Guarantor shall be permitted to pay dividends in each fiscal year subject to the following conditions for each fiscal year:
 - (1) The amount of said dividends shall not exceed the amount of additional state and federal income taxes imposed on its shareholders as a result of the Guarantor's election of Sub Chapter "S" status.
 - (2) Certification by a Certified Public Accountant:
 - (A) that the Guarantor is a Subchapter "S" corporation.
 - (B) of the total income deemed distributed and total dividends declared and/or paid to shareholders by the Guarantor.
 - (C) of the additional state and federal income taxes imposed on each shareholder as a result of Guarantor's election of Subchapter "S" status.
 - (3) Continuous compliance with all existing terms and conditions of the Financing Documents.
- d. That the Obligors and Guarantor shall maintain such financial ratios and covenants as are determined by the Authority.
- e. That the Obligor, the Co-Obligor and the Guarantor shall each submit to the Authority fully audited comparative, combined and individual financial statements prepared and certified by a Certified Public Accountant on a reviewed basis, within one hundred and twenty (120) days from the end of each fiscal year, as well as:
 - (1) signed federal and state tax returns for Obligor, Co-Obligor and Guarantor, together with all schedules and exhibits submitted with such tax returns, and provided to the Authority within forty-five (45) days from the date of filing with the applicable appropriate authority;
 - (2) a statement that all tax, insurance and utility payments required under the Lease, Mortgage and all other Financing Documents are

current and that all financial requirements and limits of the Lease, Mortgage and other Financing Documents have been complied with.

- (3) an Annual Employment Report to be certified by the Chief Financial Officer of Obligor which shall include:
 - (A) the number of jobs at the time of Closing;
 - (B) the number of jobs created from Project proceeds; and
 - (C) total employment for the fiscal year.
- f. That Financing Documents cannot be assigned, sold, mortgaged or sublet by Obligors without the prior written consent of the Authority.
- g. That the Financing Documents shall contain cross-default and cross-collateral provisions with all other loans to the Obligor or the Co-Obligor insured by the Authority.
- h. That a change in ownership of more than forty-nine percent (49%) of the outstanding voting equity interests in the Obligor or Co-Obligor (whether in any one event or in the aggregate) shall require the prior written consent of the Authority.
- i. That the Obligor and the Co-Obligor are each prohibited from lending, in any form to their respective officers, equity owners or employees.
- j. That the Obligors and Guarantor shall obtain an Environmental Site Assessment Report from a qualified engineer that is satisfactory to the Authority.
- k. That the Regulatory Agreement shall contain provision whereby the Obligors covenants that the project is in compliance with all environmental laws, that the Obligors will continue to comply with all environmental laws, and that the Obligors shall immediately notify the Authority of any notices of violation of environmental law or any claims made with respect thereto. In addition, the Obligors shall indemnify and hold harmless the Authority, the Issuer and Bank against any and all violations of environmental law.
- l. That all indebtedness owing from the Obligor, Co-Obligor or Guarantor to any officer or shareholder or equity owner is to be fully subordinated to the obligations under the Financing Documents.

- m. That the loan contemplated herein shall close simultaneously with the proposed Authority insured real estate, machinery and equipment and leasehold improvement loan to the Obligors approved on March 5, 2010.
- n. That as a result of a default under the terms of the Financing Documents, and in the event the Bank retains the services of an attorney to handle such matters, the Authority shall in no event be responsible to reimburse Bank for or pay directly or indirectly for the fees and expenses related to such attorney's services.

That the Chairman, Vice Chairman, any one member of the Authority in good standing, the Manager or the Executive Director of the Authority, or any one of them be, and each of them hereby is authorized on this 9th day of April 2010, to execute an Insurance Agreement, together with such other documents in conjunction with the Insurance Agreement, or to take such other action as they, or any of them, may deem necessary or advisable in connection with the foregoing Resolution, to carry out the obligations of the Authority with respect to the Project, said execution or action by them to be deemed conclusive evidence of the due authorization thereof.

/s/ Frank R. Benell
Member – Frank R. Benell

/s/ Frances H. Gammell-Roach
Member – Frances H. Gammell-Roach

/s/ William B. Sweeney
Member – Dr. William B. Sweeney

--ABSENT--
Member – Michael S. Imbruglia

G:\DATA\WPDATA\IRBA\Capco Steel\IRBA Resolution (Real Estate and M&E).doc